IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.4.2006

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE R.SUDHAKAR

Writ Petition No.11393 of 2006

1. Director General of Police
   Dr.Radhakrishnan Salai
   Tamil Nadu, Chennai 4.

2. The Deputy Inspector General of Police
   Villupuram District, Villupuram.

3. The Superintendent of Police
   Villupuram District, Villupuram. .. Petitioners

Vs.

1. Kuppusamy

2. The Registrar
   Tamil Nadu Administrative Tribunal
   Chennai 104. .. Respondents

Petition under Article 226 of the Constitution of India praying for a writ of Certiorari as stated therein.

For Petitioners : Mr.E.Sampath Kumar, G.A.

O R D E R

(Order of the Court was made by
P.D.DINAKARAN,J.)

The petitioners seek a writ of Certiorari calling for the records relating to the order dated 19.3.2004 on the file of the Tamil Nadu Administrative Tribunal, the second respondent herein, made in O.A.No.8181 of 1999 and quash the same.

2.1. The facts leading to the filing of the above writ petition are as under.

The first respondent was enlisted as Grade II Police Constable on 5.9.1969. He was promoted as Grade I Police Constable and thereafter, as Head Constable with effect from 16.1.1998. He was

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residing in Door NO.36, Old Tindivanam Police line. Opposite to his house, there is a common well for the police staff residing in the police line and a horse shed at the South West corner. In between the well and the horse shed, there was some vacant site.

2.2. The first respondent constructed a pucca building in the vacant place, without prior permission and he destroyed the horse shed causing damages to the tune of Rs.50,000/-. Hence, he was placed under suspension by order dated 18.2.1999. The first respondent filed O.A.No.4446 of 1999 and obtained an order of stay on 17.8.1999. Consequently, he was taken back for duty by order dated 25.8.1999. A criminal case was also filed against the first respondent in Crime No.109 of 1999 on the file of Tindivanam Police Station

2.3. Disciplinary proceedings were initiated against the first respondent. Charges were also framed. An enquiry officer was appointed. In the light of the enquiry report, the Superintendent of Police, Villupuram, after observing all the formalities, awarded punishment of dismissal from the date of order. Hence, the first respondent preferred an appeal to the second respondent appellate authority and the same was rejected as it was time barred.

2.4. The first respondent filed O.A.No.8181 of 1999 on the file of the Tamil Nadu Administrative Tribunal. The Tribunal set aside the order of dismissal from service and imposed compulsory retirement.

2.5. In the meantime, the first respondent was acquitted in the criminal case in S.C.No.40 of 2003.

2.6. Aggrieved against the said order of compulsory retirement, the Department has filed the above writ petition.

3. The learned Government Advocate appearing for the petitioners, assailing the order of the Tribunal, contends that when the first respondent had demolished the horse shed which is a Government property, the Tribunal ought not to have set aside the order of dismissal from service and imposed compulsory retirement, as it would pave way for others to encroach the Government property.

4.1. It is, of course, impermissible for this Court, while exercising the power of judicial review conferred under Article 226 of the Constitution of India, to go into the findings of the enquiry officer with regard to the alleged demolition of horse shed, which weighed the third petitioner to pass the order of dismissal.

4.2. However, it is settled law that the court should not interfere with the administrator’s decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of

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logic or moral standards. The scope of judicial review is limited to the deficiency in decision-making process and not the decision. Therefore, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed, vide UNITED COMMERCIAL BANK v. P.C. KAKKAR,(2003) 4 SCC 364.

4.3. The Apex Court has further held that where the Court finds the punishment to be shockingly disproportionate, it must record reasons for coming to such conclusion and mere stating that the punishment was shockingly disproportionate is not sufficient, as it is only for the disciplinary authority or the appellate authority to reconsider the punishment of penalty imposed and the Court may only in exceptional and rare case impose proportionate punishment, after recording cogent reasons in support thereof in order to shorten the litigation.

5. A perusal of the order of the Tribunal makes it clear that the horse shed demolished by the first respondent was in dilapidated condition. More over, the first respondent was fifty years old at the time of order of dismissal and by now, he would have reached the age of superannuation. If the order of dismissal is not set aside, the first respondent would be deprived of his pension and other terminal benefits. That apart, the fact that the first respondent has become immobile and is confined to bed, in view of an accident, requires consideration of this Court.

6. In the instant case, the Tribunal has rightly recorded the reasons for imposing the punishment of compulsory retirement, instead of dismissal from service as referred to above. Therefore, finding no reason to interfere with such conclusion of the Tribunal for having rendered the punishment of dismissal as too harsh and shockingly disproportionate and modifying the same as compulsory retirement, for well founded and cogent reasons, we do not find any merit in the writ petition. Therefore, the same is dismissed. Consequently, WPMP No.12967 of 2006 is also dismissed.

kpl

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Director General of Police
Dr.Radhakrishnan Salai
Tamilnadu, Chennai-4.

2.The Deputy Inspector General of Police
Villupuram District,Villupuram.

3.The Superintendent of Police
Villupuram District
Villupuram.

4.The Registrar
Tamil Nadu Administrative Tribunal
Chennai 104.

+ one cc to Government Pleader Sr.No.21482.

SSV (CO)
RSM/16.5.2006

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